Supreme Court, U.S.
FILED

961997 JUN 16 1997

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IN THE SUPREME COURT
OF THE UNITED STATES

No. _____
October Term, 1996

HENRY ZIMMER,
Petitioner,

v.

DAN NAUMANN, parish council chairperson,
IMMACULATE CONCEPTION CHURCH,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTIONS PRESENTED FOR REVIEW

I. Is the Code of Canon Law of the Roman Catholic Church relevant evidence, given the principles announced in *Jones v. Wolf*, 443 U.S. 595 (1979)?

II. Did the lower courts impermissibly intrude upon the internal governance of the church by making presumptions that a minister, by virtue of his office, has certain authority?

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PETITION FOR WRIT OF CERTIORARI

Henry Zimmer asks that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Minnesota, filed March 18, 1997, declining review of a decision of the Minnesota Court of Appeals, and the underlying decision of the Minnesota Court of Appeals filed on January 14, 1997.

OPINIONS BELOW

This Petition seeks review of the judgment of the Minnesota Supreme Court, Dan Naumann, parish council chairperson, Immaculate Conception Church v. Zimmer, No. C2-96-1066 (Minn. March 18, 1997), reprinted at page 1a of the Appendix. This opinion affirmed the judgment of the Minnesota Court of Appeals, Naumann et al. v. Zimmer, No. C2-96-1066 (Minn. Ct. App. Jan. 14, 1997), reprinted at page 2a of the Appendix. Neither lower court decision has been reported..

STATEMENT OF JURISDICTION

This petition seeks to review the judgment of the Minnesota Supreme Court filed on March 18, 1997, and the underlying decision of the Minnesota Court of Appeals. Therefore, this United States Supreme Court's jurisdiction is based on 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof; or abridging the freedom of speech.... The Fourteenth Amendment then states that these particular constitutional privileges and immunities of citizens shall not be "abridged" by the States.

STATEMENT OF THE CASE

In the beginning, Daniel Naumann, the Parish Council Chairperson of the Immaculate Conception Church, requested a "Harassment Restraining Order" pursuant to Minn. Stat. § 609.748 (1996). The action, brought in the District Court, Anoka County, Minnesota, sought to bar Petitioner[1] Henry Zimmer from the Church's premises. The statute authorizes a court to "grant a restraining order ordering the respondent to cease and avoid the harassment of another person or to have no contact with that person. . . ." Before issuing such an order, the trial court must find that "there are reasonable grounds to believe that the respondent has engaged in harassment."

Zimmer had purportedly been barred from the premises by the parish priest and the parish council. Following this purported barring, Zimmer had attended mass at the Church on three occasions. This, according to the Church, constituted harassment under the Minnesota Statute, op. cit.

At hearing, Zimmer offered to introduce evidence tending to show that the priest and parish council lacked any authority to bar him from the premises. This evidence was to be in the form of expert testimony by a canon lawyer. An

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[1]. The Petitioner in this United States Supreme Court was the Respondent in the trial court.

offer of proof, consisting of the expert's affidavit, was made part of the record in the case, and is reproduced in the appendix at page 9a. The trial court excluded this evidence.

After a hearing held on April 25, 1996, the District Court, the Honorable James D. Gibbs, J., presiding, issued a restraining order that provides as follows:

> Henry S. Zimmer shall not enter upon the premises of the Petitioner, Immaculate Conception Church, which includes the front of the Church on 41st St. N.E., Jackson St., 40th St. N.E., and/or any other Church property.

That order remains in effect until April 24, 1998.

The Minnesota Court of Appeals, Harten, Crippen, and Kalitowski, JJ., affirmed on January 14, 1997, in an unpublished opinion, a copy of which is reproduced in the appendix. (2a).[2]

On March 18, 1997, the Minnesota Supreme Court denied discretionary review. (1a).

At the hearing, Zimmer attempted to call an expert witness, a canon lawyer, to testify on his behalf. In attempting to introduce this evidence, his attorney stated:

The canon laws are very, very clear that it requires the

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[2]. Citations to this Petition's Appendix are abbreviated ___a. Citations to the Trial Transcript are abbreviated T. ___.

> actual act of an ordained[3]: that is, an archbishop or bishop or vicar general, those people who make a determination that someone may not attend mass at a particular parish.

(T. 47).

In ordering this evidence excluded, the trial court stated:

> THE COURT: Whoop, whoop, whoop! We're not talking about canon law here.
>
> * * *
>
> We are not going to talk about canon law here under any set of circumstances. And if the folks on the Hill want to tell me we're going to talk about canon law, then they're going to do it.
>
> * * *
>
> Canon law does not supersede state law, in spite of what anybody may think. And if there's a canon law argument, it's going to take place at the end of Summit Avenue[4] and it's not going to take place in this courtroom.

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[3]. The undersigned believes that he actually used the word "ordinary," which was apparently erroneously transcribed as "ordained."

[4]. The "end of Summit Avenue" is an apparent reference to the Minnesota Judicial Center and the Minnesota State Capitol Building where the Minnesota Court of Appeals and the Minnesota Supreme Court sit respectively.

(T. 15-17).

Petitioner argued in the Minnesota Court of Appeals and to the Minnesota Supreme Court that the lower court's presumption concerning the priest's authority and its subsequent exclusion of the canon lawyer's evidence violated this Court's holdings in *Jones v. Wolf*, 443 U.S. 595 (1979) and the First Amendment of the U.S. Constitution.

Evidence was offered at trial in the form of the expert testimony of canon lawyer, Dr. Duane Galles. This evidence was not allowed. According to the subsequent offer of proof, Galles would have testified that Canon law did not permit a parish priest or an advisory church council chairman to prevent a Roman Catholic layman from attending mass. The affidavit of Canonist Dr. Galles, which is reproduced in the appendix, was offered as part of this offer of proof.

The District Court further held, without having received any evidence on the issue:

> I'm finding that a pastor of a parish or a minister in charge of a church, a rabbi in charge of a synagogue, by virtue of their office, is a person in lawful possession within the meaning of out [sic] statute that entitles them to keep a person off that property if they want to.

(T. 33).

Henry Zimmer respectfully submits that he should have been able to rebut this "finding" with admissible evidence from the Code of Canon Law.

REASONS WHY THE WRIT SHOULD ISSUE

The Court of Appeals held that this evidence was properly excluded on the grounds of irrelevance. In doing so, the Court stated:

> We believe that the admission of canon law evidence would compel the district court to construe and apply unfamiliar canons that are inherently doctrinal and ecclesiastical in nature; such evidence could lead to excessive entanglement that is prohibited under the Establishment Clause.
>
> Slip op. at 5-6 (7a).

This excluded evidence went to the heart of whether Henry Zimmer had the right to participate in the life of his parish church.

Secondly, the holding of the lower courts directly ignored the "neutral principles of law" analysis mandated by this court in *Jones v. Wolf*, 443 U.S. 595 (1979) and the holding of *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). As the trial court improperly held,

> I'm finding that a pastor of a parish or a minister in charge of a church, a rabbi in charge of a synagogue, by virtue of their office, is a person in lawful possession within the meaning of out [sic] statute that entitles them to keep a person off that property if they want to.

(T. 33).

The excluded evidence, evidence mandated under the "neutral principles of law" approach to Church disputes announced by this Court and ostensibly followed by the Minnesota Courts, should have been received.

The Restraining Order issued against Henry Zimmer essentially because he refused to obey a purported directive from the parish council and parish priest to stay away from the church's premises. The lower courts also ruled that the parish council, in an action brought by its chairperson, had standing to seek an order excluding the Petitioner from the church premises.

These assumptions were flawed. Petitioner attempted to present evidence that he did have a right to be present on the church's premises, and that the persons seeking his exclusion (the priest, the Parish Council and its chairperson) had no standing to speak for the church in demanding his exclusion.

And the lower courts went even further in their holding: These courts held that by virtue of his office, a priest, minister, or rabbi automatically holds such authority under Minnesota law.

I. THE LOWER COURTS ERRED IN FAILING TO ADMIT RELEVANT EVIDENCE WHICH WOULD HAVE SHOWN THAT THE CHURCH'S INTERNAL GOVERNING LAWS GAVE PETITIONER HENRY ZIMMER THE RIGHT TO BE PRESENT ON THE CHURCH'S PREMISES.

The holdings of the lower courts were flawed since

under the rubrics of the Roman Catholic Church, as codified in the Canon Law, Henry Zimmer did have a right to be present at his church, and the persons and advisory church council that purported to bar Zimmer had no right to do so.

This evidence, in the form of expert testimony, would have shown that Zimmer had "the right to be assisted by [his pastor] . . . especially by the word of God and the sacraments," (12a, Paragraph 9). The expert could have further testified that "the pastor acts in the person of the parish in accordance with the [canon] law," and that "a parish council is . . . merely an advisory board . . . and, with respect to a parish, has no right of ownership nor any management functions as such," (13a, Paragraph 11).

Most importantly, the expert would have testified that with respect to the church premises, Zimmer had "a right of access for the exercise, especially the public exercise, of divine worship." (13a, Paragraph 14).

This evidence was relevant, because in order to hold as they did under Minnesota law, the courts needed to find authority to exclude. That authority was merely presumed to exist in favor of the Respondent. Applying such a presumption to other fact patterns shows its fallacy:

For example, without some affirmative showing of authority, one parishioner would not have authority to exclude another. Nor, for that matter, would a parishioner have authority to exclude the priest. *See Lindstrom v. Tell*, 131 Minn. 203, 206, 154 N.W. 969, 970 (1915).

The trial court presumed that the priest, by virtue of his office, has authority to exclude a parishioner. As will be

discussed below, such a presumption is constitutionally impermissible. And under *Jones v. Wolf*, 443 U.S. 595 (1979), at the very least, Petitioner had the right to present evidence tending to rebut that presumption.

The creation of such a presumption by the Minnesota Courts amounts to an unconstitutional establishment of religion, and is improper. The *Jones v. Wolf* decision mandates that the Petitioner, Henry Zimmer, be allowed to present evidence tending to rebut the presumptions made by the Minnesota courts.

Under the Code of Canon Law, the Priest is required to administer the sacrament to the faithful. And the Canons also state that the authority to excommunicate or ban a parishioner is vested in authorities higher than the priest.

Canon 221, Section 3, states that "[t]he Christian faithful have the right not to be punished with canonical penalties except in accord with the norm of law," 12a. Exclusion from the church is clearly a "deprivation of . . . right" and, thus, under Canon 1336, a canonical penalty. And the "norm of law" does not vest authority to bar in the parish priest or the parish council. Under Canon 1419, the diocesan bishop is the judge of first instance. And Canon 1281, Code of Canon Law, states:

> With due regard for the prescriptions of their statutes, administrators invalidly posit acts which go beyond the limits and procedures of ordinary administration unless they first obtain written authority from the ordinary [the Bishop]."

As petitioner's expert would have testified, here is

nothing in the Code of Canon Law which authorizes a priest or parish council to bar a parishioner from his own church. Indeed, the Code obligates a parishioner to attend mass there. For these reasons, the Canon Law is exceedingly relevant to rebut the lower court's illegitimate presumption that the Priest has authority to ban persons. Accordingly, this evidence should not have been excluded.

It is clear that under the "neutral principles of law" approach announced in *Jones v. Wolf*, 443 U.S. 595 (1979), the Code of Canon Law should have been received into evidence.

Had the instant case involved a corporation or organization other than a church, evidence of its internal rules would be admissible.

For example, if an individual director were expelled from a corporate boardroom by another director, or even by a custodian or security guard, no one would question the expelled director's right, if charged with trespass, to show that the person excluding him had no right to do so. The excluded person could present evidence that, under the business's internal rules, no such authority existed in the person who had excluded the other person. Those internal rules might include Articles of Incorporation, corporate bylaws, or other internal procedures of the corporation. *See, e.g., People v. Barton*, 18 A.D.2d 612, 234 N.Y.S.2d 263 (1962).

The "neutral principles of law" approach allows the same evidence to be presented in a church property dispute. "A neutral principle of law analysis relies upon the language of deeds, the terms of local church charters, state statutes governing the holding of church property, provisions in the

constitution of the general church concerning the ownership and control of church property, explicit trust provisions, and general rules of property law." *Piletich v. Deretich*, 328 N.W.2d 696, 700 (Minn. 1982).

This Court, in *Jones*, made clear that some of the sources that must be examined by a court would include "religious documents":

> The neutral-principles method . . . requires a civil court to examine certain religious documents, such as a church constitution . . . . In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms.

Jones, 443 U.S. at 604.

And as discussed in more detail below, the *Gonzalez* case discussed the Canon Law of the Roman Catholic Church throughout the opinion, and made at least ten references to specific canons.[5] *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), and *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969) subsequently made clear that the holding in *Gonzalez* is of constitutional dimension.

Petitioner concedes that the Code of Canon Law is a "religious" document. However, the Minnesota courts had an obligation to scrutinize this Code, albeit in purely secular terms.

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[5]. On page 13, the Court cites Canons 108 (twice), 976 (twice), 1354, 1364, 1365, and 1442 (twice). On page 14, the Court cites Canon 968.

By reference to the church's internal rules, the Code of Canon Law, Henry Zimmer had both the right and the duty to attend mass. Thus, the action of the priest and parish council in excluding him was wrongful. Zimmer should have been able to present this important evidence.

One of the types of documents specifically referred to in *Jones* was local church charters. The charter of the Church of the Immaculate Conception is its Articles of Incorporation, filed with the Minnesota Secretary of State in 1924. That document vests the power of the church, including the power to "take charge of, hold and manage all property, personal and real. . ." in a board of directors. Further, the Articles of Incorporation state that all bylaws must be "not contrary to . . . the discipline of the Roman Catholic Church. . . ." (Trial Exhibit 5, T. 23).

This latter provision of the Articles of Incorporation is worded similarly to a New York statute construed in *Filetto v. St. Mary of Assumption Church*, 61 Misc. 2d 278, 281, 305 N.Y.S.2d 403, 405-06 (Sup. Ct. 1969). In that case, the statute provided that the trustees of a religious corporation shall "administer [property] in accordance with the discipline, rules and usages . . . of the ecclesiastical governing body."

The New York court held that this statute, which is worded almost identically to the Articles of Incorporation in the instant case, "must be read in conjunction with the Code of Canon Law of [the Roman Catholic] Church." *Id.* at 283, 305 N.Y.S.2d at 407.

The court went on to decide the issue of whether a merger was proper by reading the Code of Canon Law, not, of course, in religious terms, but in terms of who had authority to

order the merger. *Cf. Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 105-08 (Colo.), *cert. denied*, 479 U.S. 826 (1986) (Extensive discussion and application of Episcopal Canon Law). In both *Filetto* and *Mote*, the Canon Law was received into evidence, without the need for expert testimony. And this Court, of course, in *Gonzalez*, made at least ten references to the Canon Law, and that decision was subsequently held to rest on Constitutional grounds. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969).

In the instant case, too, petitioner respectfully submits that recourse should have been had to the Code of Canon Law to determine whether the priest had authority to exclude a member of the congregation.

The Minnesota Supreme Court has previously held that admission of the Code of Canon Law should properly be made through expert testimony, such as was proffered in the instant case. *State v. Zimmer*, 487 N.W.2d 886 (Minn. 1992), *cert. denied*, 506 U.S. 1051 (1993). *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929), teaches that the Courts may actually take judicial notice of that body of law. In any event, Petitioner complied with the Minnesota Supreme Court's earlier directive and tendered this evidence in the form of expert testimony. That evidence clearly should have been considered.

II. THE LOWER COURTS ERRED BY PRESUMING THAT A PRIEST OR MINISTER, BY VIRTUE OF HIS OFFICE, IS THE "LAWFUL POSSESSOR" OF CHURCH PROPERTY WITH POWER TO EXCLUDE OTHER PERSONS.

As noted above, the lower court presumed that the priest, by virtue of his office, was vested with the authority to exclude the Petitioner. Such a presumption clearly violates the Establishment Clause of the First Amendment, as it imposes upon the Church a civil court's understanding of how religion ought to work. Under the precedents of this Court, such a presumption is improper.

The presumption allowed by the Minnesota appellate stands as an unprecedented presumption. In some cases, one observes a presumption of "majority rule" within a church. *See, e.g., Smith v. Riley*, 424 So.2d 1166, 1171 (La. App. 1982). But even that presumption can be rebutted. *Id.* There is absolutely no authority for a presumption of authority to exclude on the part of the priest.

The trial court explicitly made this improper presumption:

> I'm finding that a pastor of a parish or a minister in charge of a church, a rabbi in charge of a synagogue, by virtue of their office, is a person in lawful possession within the meaning of out [sic] statute that entitles them to keep a person off that property if they want to.

(T. 33).

The issue presented here is clearly more than an evidentiary point. An important Federal issue is presented: Can State courts make *presumptions about the internal workings of a church?* As noted above, had the Zimmer case involved a corporation that manufactured tractor parts, no one would doubt that the defendant could present evidence that

the person excluding him lacked authority to do so.

The federal question in the instant case arises from the fact that the Minnesota courts treated a religious corporation differently from a secular corporation. The Minnesota courts, by ignoring the Church's internal governance, essentially amended that internal governance. To put it bluntly, the state "established" a rule for the authority of a priest, minister, or rabbi. Under the Establishment Clause, this was improper.

Here, the lower court made an impermissible assumption, without supporting evidence, of the extent of the authority held by a priest, pastor, or rabbi. A trial court has no business deciding who has authority and who does not have such authority within a church. The Free Exercise clause of the First Amendment dictates that the Courts must not meddle in internal church disputes to make such decisions for the Church.

The present Zimmer case is governed by *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). *Gonzalez* involved a party's alleged entitlement to be appointed to a chaplaincy of the Roman Catholic Church. The most striking aspect of the *Gonzalez* opinion is just how much this United States Supreme Court did what the Minnesota Courts identified as improper: There are many separate references to the Code of Canon Law in this Court's *Gonzalez* opinion.

Gonzalez arose in the Philippine Islands. The chaplaincy at issue in Gonzalez was endowed by will in 1820. The will provided for the appointment of the great-grandson of the testatrix as chaplain, and provided for a line of succession of the closest surviving relative.

The Petitioner in *Gonzalez* claimed to be the closest surviving relative. In 1922, he was presented to the Archbishop of Manila for appointment to the Chaplaincy.

In the meantime, however, in 1917, the Roman Catholic Church had adopted a new *Codex Juris Canonici*, which took effect in 1918. The Archbishop took the position that under the newly adopted *Codex*, the Petitioner (then 12 years of age) was ineligible for the office as not having begun any theological training.

In the lower courts, the Petitioner argued that the adoption of the 1918 *Codex* deprived him of his rights to the Chaplaincy in violation of the U.S. Constitution, the Treaty with Spain, and the Organic Act of the Philippine Islands.

The trial court agreed with the Petitioner, and held that he was entitled to the chaplaincy, in accordance with the canon law in force in 1820. The Supreme Court of the Philippines reversed, and held that "it was an implied term of the deed of foundation that the qualifications of a chaplain should be such as the church authorities might prescribe from time to time, and that, since [the Petitioner] confessedly did not possess the qualifications prescribed by the new *Codex* which had been promulgated before he was presented, he could not be appointed. *Id.* at 15.

This Court agreed, and in so doing, squarely placed its reliance upon the Canon Law:

> For we are of opinion that the canon law in force at the time of the presentation governs, and the lack of the qualification prescribed by it is admitted.

Id. at 17.

The critical feature of Gonzalez is simply that this Court considered the Canons of the Roman Catholic Church, and made its decision based upon those Canons. What this Court did not do was make any assumption as to the Petitioner's qualifications. The case was resolved by reference to what would later be called "neutral principles of law": The plain meaning of the Canons dictated a certain result, and this Court was compelled to follow them.

In *Gonzalez*, one party claimed entitlement to a certain office. That alleged entitlement was rebutted by this Court by reference to the Canon law. In the instant case, one party claims entitlement to certain powers by virtue of his office. That alleged entitlement can be rebutted by reference to the Canon Law.

The Minnesota courts made assumptions as to the Priest's authority. Under *Gonzalez*, those presumptions were improper. Under the lower court's holding, every priest, minister, or rabbi of every faith is deemed to have certain rights and obligations. The governance of those faiths is completely ignored when a civil magistrate imposes his or her ideas of what a priest, minister, or rabbi can or should be able to do.

In some cases, ministers may be vested with the power presumed by the Minnesota courts' rulings. But if one denomination chooses to vest its clergy with more authority or less authority, our Constitution guarantees that denomination or religious body the right to do so, free from interference by the civil magistrate.

The Roman Catholic Church, according to its Canon Law, does not vest its priests or parish councils with the authority to exclude a parishioner. Under the Code of Canon Law, that authority is vested in higher authorities, and even then remains subject to the highest procedural safeguards. By making a presumption, and refusing even to entertain the Code of Canon Law, the Minnesota Courts clearly overstepped the role of the civil magistrate and imposed or established a governance upon the Church, a rule which the Church had never adopted itself.

The exact holding of *Gonzalez* is that the qualifications of a member of the clergy cannot be presumed: Such a determination must be made in deference to the internal rules of the church. Henry Zimmer asks nothing more: He seeks merely deference by the civil courts to the church's internal rules regarding the clergy's authority.

The *Gonzalez* decision did not explicitly state that its holding was based upon the Constitution. Later cases make clear, however, that the *Gonzalez* holding is, indeed, grounded in the First Amendment.

Citing *Gonzalez*, this Court stated in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); "Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as part of the free exercise of religion against state interference."

And *in Presbyterian Church v. Hull Church*, 393 U.S. 440, 447 (1969), this Court stated: "In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), the court converted the principle of *Watts* [*v. Jones*, 80 U.S. (13 Wall.) 679

(1872)] as qualified by Gonzalez into a constitutional rule."

As noted above, *Gonzalez* relates directly to the qualifications of clergy. But it has been extended by the Third Circuit to the same question presented in the instant case, namely, authority of clergy. In *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 87 (3d Cir. 1996), the minister of a church, after a schism, executed a quit-claim deed to certain church property. The Third Circuit, following *Gonzalez*, held that this was improper, as the Church's internal governance did not vest the minister with such authority. Instead, the church's certificate of incorporation required a two-thirds vote by church members. *Id.* at 95.

In other words, a minister is not, merely by virtue of his office, presumptively vested with the power to convey property. Recourse must be had to the Church's internal law. And in the instant case as well, a Priest is not, merely by virtue of his office, presumptively vested with the power to exclude parishioners. A presumption that he has this power, without even the opportunity to present evidence to the contrary, amounts to a judicial overruling of those church law provisions to the contrary.

Sadly, this Zimmer case is before the civil courts. But it is; and the "neutral principles of law" approach dictates that courts cannot make their own assumptions as to what internal church governance ought to be or is. When the Courts consider these disputes, they must defer absolutely to the internal policy of the church. In the instant case, an expert witness was available to assist the Court in that inquiry. And no doubt, the opposing parties would have presented their

views, after which the Courts could have made an informed decision. But the Minnesota courts committed constitutional error when they merely conceded the point and decided who had what authority, without even allowing reference to the Church's internal governance.

The critical evidence on this point offered by Zimmer would have established that the priest, the parish council, and its chairperson lacked any authority to exclude Henry Zimmer.

The importance of the instant case goes far beyond an evidentiary ruling. The lower courts failed to give deference to a whole body of law designed to resolve important disputes. The Roman Catholic Church has adopted rules to address the situation. The holding below mocks religion by pretending that an entire body of law, namely, the internal rules of religious entities, is not relevant to the very issues that law intends to resolve.

Under the First Amendment of the Federal Constitution, the State of Minnesota has no business applying presumptions and personal ideas of what a priest or minister can and cannot do. "[R]eligion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." *Engel v. Vitale*, 370 U.S. 421, 432 (1962). If one party brings a case before the courts and claims certain authority, then the other party surely has the right to show what authority actually exists. Under the First Amendment, the civil magistrate may not make such important decisions of the church's workings based upon his or her own understandings, without any actual evidence.

The decision of the lower courts in this case fails to give proper deference. The Roman Catholic Church, of which

Henry Zimmer is a faithful member, has rules, laws, and procedures, for deciding important questions. Ignoring that body of law does no service to the cause of American religious liberty.

One other matter must be addressed: It is acknowledged that Counsel for the Church of the Immaculate Conception brought a proxy supposedly signed by the Archbishop and the Vicar General which permitted Henry Zimmer to be banned from his parish church. The banning letter from the parish council does not reference or attach this proxy, 15 a. The dates of the proxy, its accompanying corporate resolution, and the time at which Zimmer received actual notice of this proxy were all in dispute. Each time that Counsel for Zimmer asked in cross-examination about these dates, the trial court sustained objections, T-32 through 33.

The denial of Zimmer's simple requests for the most basic information constitutes separate due process issues.

After all, Henry Zimmer had never seen, had never received a copy of this proxy or corporate resolution before the harassment hearing date, or, perhaps, a day before the hearing. Zimmer only wanted to know when the proxy and corporate resolutions were actually signed. The trial court would not allow any questioning concerning these critical facts. Instead, the trial court interjected its own presumption as to the right of a minister to exclude persons from public worship. Such a presumption is constitutionally untenable.

CONCLUSION

This case presents two important federal constitutional issues as to a civil court's role in deciding church disputes:

First, the courts must receive evidence as to what the church's internal rules actually are. Second, the civil magistrate must not inject his or her understanding as to how a church should operate because this violates both the Free Exercise and the Establishment clauses of the First Amendment of our Constitution.

Henry Zimmer asks that a Writ of Certiorari issue to review the judgment of the Minnesota Court of Appeals and the order declining review by the Minnesota Supreme Court.

Dated at St. Paul, Minnesota, this 5th day of June, 1997.

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APPENDIX A

STATE OF MINNESOTA
IN SUPREME COURT
C2-96-1066

Dan Naumann, parish council chairperson,
Immaculate Conception Church, petitioner,
Respondent,

vs.

Henry Zimmer,
Appellant.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Henry Zimmer for further review be, and the same is, denied.

Dated: March 18, 1997

BY THE COURT:
s/s
Chief Justice

APPENDIX B

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1996).

STATE OF MINNESOTA
IN COURT OF APPEALS
C2-96-1066

Dan Naumann, parish council chairperson,
Immaculate Conception Church, petitioner,

Respondent,

vs.

Henry Zimmer,

Appellant.

Filed January 14, 1997
Affirmed
Harten, Judge
Anoka County District Court
File No. C0-96-896

Andrew J. Eisenzimmer, John C. Gunderson, Meier, Kennedy & Quinn, Chartered, 2200 North Central Life Tower, 445 Minnesota Street, St. Paul, MN 55101 (for Respondent).

Lawrence H. Crosby, Crosby & Associates, 25 Empire

Drive, St. Paul, MN 55103 (for Appellant).

Considered and decided by Harten, Presiding Judge, Crippen, Judge, and Kalitowski, Judge.

HARTEN, Judge (Hon. James D. Gibbs, District Court Trial Judge)

Appellant Henry Zimmer challenges a harassment restraining order prohibiting him from entering the property of respondent Immaculate Conception Church. Because we conclude that the district court properly excluded canon law evidence and lawfully issued the restraining order, we affirm.

Facts

This is the latest in a series of legal disputes involving Zimmer and the Immaculate Conception Church. The church's former pastor, Father Walter Sochacki, previously banned Zimmer from church property for disruptive demonstrations and harassment; this culminated in the church obtaining a two-year restraining order that barred Zimmer from the premises. Following expiration of the order, Zimmer was allowed to return to the church, but discord between Zimmer and the church reoccurred and the church again initiated actions to ban him from its property.

As a religious corporation governed by Minn. Stat. § 315.15 (1996), and according to its bylaws, the church's board of directors includes the diocesan bishop and vicar general, the church's pastor, and two laypersons. The board of directors adopted a corporate resolution authorizing the current pastor, Father Paul Moudry, to send a letter to Zimmer banning him from church property and to enforce the ban through

appropriate legal action. On January 21, 1995, Father Moudry's letter was hand-delivered to Zimmer.

Later, on three separate occasions, Zimmer attended services at the church despite being banned from the premises. On behalf of the church, Dan Naumann, the church's parish council chairperson, filed a petition and affidavit for a harassment restraining order. Following a hearing, the district court issued a restraining order that provided:

> Henry S. Zimmer shall not enter upon the premises of the Petitioner, Immaculate Conception Church, which includes the front of the Church on 41st St. N.E., Jackson St., 40th St. N.E., and/or any other Church property.

The restraining order remains in effect until April 24, 1998. This appeal followed.

Decision

We have held that caselaw construing the Minnesota Domestic Abuse Act applies to harassment restraining orders pursuant to Minn. Stat. § 609.748 (1996). See Anderson v. Lake, 536 N.W.2d 909, 911 (Minn. App. 1995) (domestic abuse act sufficiently similar to allow application of caselaw to section 609.748). Under the domestic abuse act, grant of relief is within the district court's discretion. Mechtel v. Mechtel, 528 N.W.2d 916, 920 (Minn. App. 1995). Consequently, our review of the district court harassment restraining order is limited to determining whether the district court abused its discretion.

Zimmer argues that the district court erred in issuing

the restraining order because (1) the church did not initiate the instant action against Zimmer, (2) the district court improperly excluded canon law evidence, (3) the pastor was not authorized to ban Zimmer from church property, and (4) the restraining order is ambiguous and overly broad.

1. Zimmer contends that because the church, as the real party in interest, did not initiate the harassment proceedings, the entire action is void. We disagree. Our review of the record indicates that the parish council chairperson, Naumann, filed the original petition on behalf of the church. And even had it not been brought on behalf of the church, any defect has been cured by ratification. The Rules of Civil Procedure provide:

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Minn. R. Civ. P. 17.01. At the restraining order hearing, counsel for the church stated that the church ratified and joined the harassment petition originally filed by Naumann. Therefore, the church's ratification of the action had the same effect as if the petition had been filed by the church.

2. Zimmer asserts that the district court erred by refusing to admit evidence on canon law to establish whether Father Moudry had the authority to ban him from church property. The question of whether to admit evidence rests within the

broad discretion of the district court and its rulings will not be disturbed unless they constitute an abuse of discretion or are based on an erroneous view of the law. Uselman v. Uselman, 464 N.W.2d 130, 138 (Minn. 1990).

Relying on a supreme court decision in a previous criminal trespass action against him, Zimmer asserts entitlement to apply canon law in the present harassment action. See State v. Zimmer, 487 N.W.2d 886 (Minn. 1992) (affirming the exclusion of canon law evidence). In its decision, the supreme court stated:

> If [Zimmer] had called an expert on canon law to testify, portions of the Code [of canon law] (subject to requirements of relevancy and nonentanglement) might have been admissible.

Id. at 888 (citation omitted) (emphasis added). Zimmer maintains that this language is a ``clear directive" entitling him to present canon law evidence. We reject this assertion.

Generally, the First Amendment prohibits civil courts from deciding ecclesiastical or doctrinal disputes. *Piletich v. Deretich*, 328 N.W.2d 696, 699 (Minn. 1982) (citing *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 368- 70, 90 S. Ct. 499, 500-01 (1970) (Brennan, J., concurring)). Civil courts can hear non-doctrinal disputes that can be determined utilizing neutral principles of law. *Jones v. Wolf*, 443 U.S. 595, 602-05, 99 S. Ct. 3020, 3024-3026 (1979); Piletich, 328 N.W.2d at 701-702.

Here, the district court had before it a religious corporation governed by Minn. Stat. § 315.15 and evidence of

certain actions taken by that corporation. The district court admitted into evidence a proxy executed by the diocesan bishop and vicar general authorizing Father Moudry to appear on their behalf at the board meeting to ban Zimmer from church property. The district court also admitted into evidence the board of director's record of action and the parish corporation's resolution excluding Zimmer from church property. These secular documents provided the district court with a familiar and neutral basis to decide the harassment action before it. We believe that the admission of canon law evidence would compel the district court to construe and apply unfamiliar canons that are inherently doctrinal and ecclesiastical in nature; such evidence could lead to excessive entanglement that is prohibited under the Establishment Clause. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971) (explaining the three-part test for challenges under the Establishment Clause).

Moreover, the factual foundation for the admission of canon law evidence was deficient. Zimmer's canon law expert was unaware of the action taken by the diocesan bishop and vicar general and the corporate resolution adopted by the board of directors. Without this information, the evidence proffered by Zimmer's canon law expert was without proper foundation and irrelevant. We conclude the district court did not abuse its discretion in excluding the canon law evidence.

3. Zimmer asserts that the district court erred in issuing the restraining order. He maintains that Father Moudry did not have authority to ban him from church property, as the district court decided. We disagree.

As a corporate ``person," the church had standing to obtain a harassment restraining order. *See Dayton Hudson*

Corp. v. Johnson, 528 N.W.2d 260, 262 (Minn. App. 1995) (holding that a corporation is deemed a person for purposes of harassment restraining order statute). The church's board of directors took the appropriate corporate action to ban Zimmer from church property: (1) the archbishop and vicar general, as members of the board, executed a proxy authorizing Father Moudry to appear on their behalf and vote for them at the board meeting; (2) the church's board of directors convened and adopted a resolution to send a letter to Zimmer banning him from church property; (3) a letter banning Zimmer from church property was hand-delivered to Zimmer that same day; (4) Zimmer later attended services at the church and engaged in activities that harassed the church; (5) Naumann filed a petition for a harassment restraining order; and (6) the church ratified and joined the petition. Accordingly, we conclude that Father Moudry had the authority to ban Zimmer from church property and the district court did not abuse its discretion by issuing a restraining order.

4. Finally, Zimmer contends that the restraining order is ambiguous and overly expansive. We believe the language of the restraining order, quoted above, is sufficiently clear and tailored to protect the interests of both parties.

Affirmed.

Dated: 6 January 1997 /s/
James C. Harten

APPENDIX C

AFFIDAVIT OF DUANE GELLES

AFFIDAVIT

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Comes now, Duane L.C.M. Galles, who being first duly sworn, on his oath deposes and says:

1. That he received the degree of Juris Doctor from William Mitchell College of Law in Saint Paul, Minnesota, and was admitted to the bar of the Supreme Court of the State of Minnesota on 15 April 1977 and to the bar of the Supreme Court of the United States on 2 June 1981 and that he is a member in good standing of the American Bar Association;

2. That he received the degree of licentiate in canon law from Saint Paul University in Ottawa, Ontario, on March 3, 1989, and that he is a regular or voting member in good standing of the Canon Law Society of America;

3. That the degree of licentiate in canon law is the functional equivalent in the canon law system of the juris doctor degree in American law; under canon 1421(3) of the Code of Canon Law it is the minimum qualification for the office of judge of a canonical tribunal; it is the minimum qualification for regular or voting membership in the Canon Law Society of America, the professional association of

Roman Catholic canonists or canon lawyers in the United States.

4. That his publications in law and canon law include the following:

"Unclaimed Property and Probate Lawyers", *Bench and Bar of Minnesota* (July 1988).

"Concerts in Church", *Homiletic and Pastoral Review* (November, 1988).

"The Civil Law", *The Jurist* (Spring 1989)

"The Basilica after Vatican II", *Homiletic and Pastoral Review* (October, 1989).

"Statutory Profile: Minnesota's Unclaimed Property Law", *Hamline Journal of Public Law and Policy* (Fall 1990).

"Concerts in Church: A Canonical Opinion", *Sacred Music* (Spring 1991).

"Abandoned Personal Property in Rental Units: What's a Landlord to do?", *The Hennepin Lawyer* (January-February, 1992).

"The Church's Sacramental Registers", *Homiletic and Pastoral Review* (December, 1992).

"Deacons and Church Music", *Sacred Music* (Winter, 1994)

5. That his experience includes service as canonical consultant for some five years to canon law clients and that some of these canon law cases have involved church closure cases.

6. That Roman Catholic canon law is one of the world's venerable legal systems; it is commonly treated by students of comparative law; it is commonly studied at the law faculties of the state universities of Europe: Gratian, who died c. 1140, is commonly called the "Father of canon law", for, stimulated by the re-discovery of the *corpus juris civilis* and the revival of the teaching of Roman law at the mediaeval universities, he systemized the hitherto uncompiled canons of the church in a work called the "Decretum". A further compilation was made in 1234 by Pope Gregory IX called the "Decretals" and, when supplemented by the "Liber Sextus" of Pope Boniface VIII, the "Clementiae" of Clement V, and the "Extravagantes" of John XXII, these five works form the *corpus juris canonicum* or the basic body of canon law in effect until the early part of this century. In 1917 this body of canon law was supplanted by the 1917 *Code of Canon Law*, which was the last great legal codification set in train by the Enlightenment on par with the French *Code Civile* of 1804 and the German Civil Code of 1908, in 1983 the 1917 Code was supplanted by the *Code of Canon Law* of that year, which today remains in force in the Latin or western church, including the Archdiocese of Saint Paul and Minneapolis.

7. As in most major legal systems the subject of rights in canon law is the person, which can be a natural person or a fictive legal person when it is called a juridical person. Canon 96 provides that a natural person becomes a person in canon law when he is baptized.

8. Canon 211 states that "all Christ's faithful have the obligation and the right to strive so that the divine message of salvation may more and more reach all people of all times and all places". Accordingly, canon 212 states that "Christ's faithful are at liberty to make known their needs, especially their spiritual needs, and their wishes to the pastor of the church" and "have the right, indeed at times the duty" "to manifest to the sacred pastors their views on matters which concern the good of the church" and the "right also to make their views known to others of Christ's faithful."

9. Besides their right to free speech, in the church the faithful further "have the right to be assisted by their pastors from the spiritual riches of the church, especially by the word of God and the sacraments" (canon 213), "the right to worship God" (canon 214), the right freely to establish and direct associations which foster the Christian vocation in the world (canon 215), the right, "since they share in the Church's mission", to "promote and support apostolic action by their own initiative" (canon 216), the right to be free of unlawful harm to the good reputation they enjoy (canon 220), and the right lawfully to vindicate and defend the right they enjoy in the church as well as "the right that no canonical penalties be inflicted upon them except in accordance with the [canon] law (canon 221), at the same time they are obligated to promote social justice. Furthermore, laws which inflict a penalty or restrict the free exercise of rights are to be interpreted strictly which is to say restrictively (canon 18).

10. Canon 374 provides that each diocese is to be divided into "distinct parts or parishes" and canon 102 provides that a person acquires domicile in a parish by *de facto* residence in its territory for five years.

11. Canon 519 states that the pastor of the parish is to exercise pastoral care of the community entrusted to him under the authority of the diocesan bishop. A parish is a legal entity in canon law (canon 515) and its pastor acts in the person of the parish in accordance with the law (canon 532). But administrators of church property are not to begin legal proceedings in the name of a public juridical person, such as a parish, nor are they to contest them in a secular court without first obtaining the written permission of their proper ordinary (canon 1288). A parish council is, under canon 536, merely an advisory board to advise the pastor and, with respect to a parish, has no right of ownership nor any management functions as such.

12. Canon 912 declares that "any baptized person who is not forbidden by law may and must be admitted to Holy Communion". However, "those upon whom the penalty of excommunication or interdict has been imposed or declared and others who obstinately persist in manifest grave sin are not to be admitted to Holy Communion" (canon 915).

13. According to the *Commentary* on the Code of Canon Law at p. 653 published by the Canon Law Society of America in connection with canon 915 a "manifest sin" is a "serious sin" which is "publicly known"; the *Commentary* further states that for the minister of communion "any prudent doubt about either the gravity or the public nature of the sin should be resolved by the minister in favor of the person who approaches the sacrament"; this is to say, that the evidentiary standard for refusing communion is that of "moral certitude", which has a canon law standard of proof only short of the criminal law standard in the American legal system of "beyond a reasonable doubt."

14. A church is defined by canon 1214 as "a sacred building intended for divine worship to which the faithful have a right of access for the exercise, especially the public exercise, of divine worship".

15. An "ordinary" is a pope, diocesan bishop, vicar general or episcopal or major superior of a clerical institute of religious or pontifical right. The pastor of a parish is not an "ordinary". Canon 1341 only permits an ordinary to institute a judicial or administrative proceeding for the imposition of a canonical penalty and canon 1342 forbids the imposition or declaration of perpetual penalties administratively by decree.

Further affiant says not, except that in the interests of justice he is pleased to make this affidavit.

/s/
Duane L.C.M. Galles, JD, JCL

Sworn to before me this 31 day of January 1996.
/s/
Wendy Sue Prince
Notary Public

WENDY SUE PRINCE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

APPENDIX D

January 20, 1995

HAND DELIVERED

Mr. Henry Zimmer
4021 California Street Northeast
Minneapolis, MN 55421

Re: The Church of the Immaculate Conception

Dear Mr. Zimmer:

For quite some time now the parish leadership has been concerned about matters relating to the protest and demonstration activities you have engaged in at the Church of the Immaculate Conception. As you know, in the past these activities have resulted in trespassing charges, a restraining order, civil litigation and other incidents involving issues of concern relating to liturgical practice, worship, public safety and personal welfare.

Following the expiration of the restraining order on May 10, 1993, you were advised that you were being permitted to return to parish property. At the time, you were advised that we were hopeful that this would bring the matter to a peaceful, pastoral conclusion by having you in church for liturgical celebrations rather than having you continue to picket outside the church. For a number of weeks, the parish leadership has engaged you in discussion and a dialogue in an attempt to persuade you to cease the activities in question. These efforts have been unsuccessful in resolving these matters and you have indicated that you intend to continue your conduct of the past. As you know, this conduct

has lead to difficulties including the disruption of events at the church.

It is with reluctance, therefore, that you are advised that effective immediately you are no longer allowed on property of the Church of the Immaculate Conception. If you return to the property or come on to parish property, the appropriate legal authorities will be contacted and charges referred.

This decision to again bar you from parish property was made after consulting with appropriate ecclesiastical officials to ensure that, as possessor of the property, the requisite authority to indefinitely exclude you from the property exists. This decision is unrelated to any ecclesiastical or doctrinal dispute but rather because you have persisted in actions which many find to be intimidating, obstructive and injurious.

Your repeated, intrusive and unwanted acts, words and gestures have adversely affected the safety, security and the privacy of others. Your conduct has been injurious and offensive, has obstructed the free use of parish property and has interfered with the comfortable enjoyment of that property. You have shown no regard for the consequences to others from your conduct; in fact, such opprobrious conduct is reprehensible.

It is certainly recognized that each person is to be accorded rights of free speech and peaceful assembly. It is your manner and place of protest, rather than your message, that is at issue. There is concern not only for the safety and security of parishioners, but for your safety and security as well.

Significant weight in making this decision has been given to concerns expressed by parishioners who have had their right to worship denied or interfered with as a result of your activities.

A parishioner seeking to worship in the church should be free from anxiety and fear and should be able to freely move into and out of the church. Since parishioners are not free from such anxiety or fear and have been hampered in their attempts to enter and leave church property, they have been adversely affected.

While the decision to bar you from parish property may not in and of itself be enough to result in your ceasing such activities on public property, such as streets and sidewalks, it is nevertheless necessary. It is our further intent to initiate legal action against you to enjoin and abate any of your activities which may continue to invade and interfere with the personal and property rights of the parish and its parishioners and the privileges to which the parish and its parishioners are entitled. For a long period of time, the focus of our efforts has been to address and respond to your protests of injustice and objections to liturgical practice. It is time, however, to shift that focus and address the concerns of parishioners who have become patient and tolerant toward you for so long.

THE CHURCH OF THE
IMMACULATE CONCEPTION OF
COLUMBIA HEIGHTS

By: s/s
Its: Vice President